No. 20724

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ACRON INVESTMENTS, INC., VELTURON CORPORATION, METRIM CORPORATION, FULLERTON COUNTRY CLUB, C. S. JONES, EDITH B. JONES, LOS COYOTES COUNTRY CLUB, BELLEHURST COUNTRY CLUB, KENNETH G. WALKER and NANCY M. WALKER,

Appellants,

vs.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION,

Appellee.

Appeal From the District Court for the Southern District of California, Central Division.

Appellants' Brief of Appellants Acron Investments, Inc., Velturon Corporation, Metrim Corporation, Fullerton Country Club, C. S. Jones, Edith B. Jones, Los Coyotes Country Club, and Bellehurst Country Club.

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I.

JURISDICTION.

This is an appeal from an order of the District Court dening motions to dismiss the complaint in this case on the ground that the District Court does not have jurisdiction. In making the order denying the motions

to dismiss, the District Court certified in writing and in the order that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of this litigation. Within ten days appellants applied to this Court for leave to appeal from the District Court's order, and leave to appeal was granted.

This Court has jurisdiction to entertain this appeal from the District Court's order under 28 USCA 1292-(b), which provides as follows:

> "(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the District Court unless the district judge or the Court of Appeals or a judge thereof shall so order."

This Court has stayed the trial and pre-trial of the action pending disposition of this appeal.

II.
STATEMENT OF THE CASE.

This is an action to judicially foreclose deeds of trust on real property located in Orange County, California. The deeds of trust in question were given to the Long Beach Federal Savings & Loan Association (hereinafter "Long Beach Federal") to secure loans made by Long Beach Federal to some of the appellants herein. Prior to commencement of this action, the deeds of trust and the notes which they secure were assigned by Long Beach Federal to the appellee, Federal Savings & Loan Insurance Corporation (hereinafter "the Corporation").

The complaint contains 467 causes of action. The first 461 causes of action are substantially similar. Each of them alleges that one of the appellants is indebted on a promissory note given to Long Beach Federal and assigned to the Corporation. It is alleged that each note is secured by an "individual" deed of trust on a particular parcel of real property, and also by another "blanket" deed of trust covering all of the property in the subdivision. It is further alleged that each of the appellants is the *alter ego* of the maker of the note and that a deficiency judgment should be entered against all of the appellants. [See, *e.g.*, Clk. Tr., pp. 5-22, First Cause of Action.] The other defendants named in the complaint are apparently persons having some junior interest in the property which is sought to be foreclosed.

The remaining causes of action are ancillary to the foreclosure allegations. Cause of action 462 alleges that each of the trust deeds provides that in the event of default the beneficiary may enter the property and collect rents. [Clk. Tr., pp. 926-928.] Cause of action 463 al-

leges that each of the trust deeds contains an assignment of rents. [Clk. Tr., p. 928.] Cause of action 464 alleges that all of the notes and individual trust deeds are held in escrow together with certain loan proceeds, and a declaration of the rights of the parties to the ecrow is sought. [Clk. Tr., pp. 929-931.] Cause of action 465 alleges that the Corporation is entitled to the notes, trust deeds and funds in escrow pursuant to certain "general pledge agreements" given to Long Beach Federal and assigned to the Corporation. [Clk. Tr., pp. 931-933.] Cause of action 466 alleges that appellant Fullerton Country Club promised to give a chattel mortgage on the assets of the Country Club. [Clk. Tr., pp. 933-934.] Cause of action 467 seeks an accounting, pursuant to the assignments of rents and general pledge agreements, of rents and other monies collected by the appellants from leases and conditional sales contracts. [Clk. Tr., pp. 934-935.]

The complaint alleges the following bases of federal jurisdiction:

12 USCA 1725, which authorizes the Federal Savings & Loan Insurance Corporation to "sue and be sued, complain and defend, in any court of competent jurisdiction." [Clk. Tr., p. 5, lines 9-13.]

28 USCA 1345, which provides that

> "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." [Clk. Tr., p. 5, lines 14-22.]

28 USCA 1444, which permits the United States to remove an action to the federal court when it is sought to foreclose a federal tax lien. [Clk. Tr., p. 5, lines 23-29.]

Each of the appellants herein moved to dismiss the complaint on the ground that the District Court does not have jurisdiction. [Clk. Tr., pp. 1184-1185, 1212-1213.] All possible questions of jurisdiction were fully briefed in the District Court. [Clk. Tr., pp. 1186-1210, 1214-1227, 1228-1235, 1237-1239.] The Corporation conceded that there is no federal question involved [Clk. Tr., p. 1233, lines 20-21], and stated that its sole claim of jurisdiction is that it is an "agency" of the United States within the meaning of 28 USCA 1345. [Clk. Tr., p. 1229, lines 7-17.] Whether the Corporation is an "agency" within the meaning of 28 USCA 1345 depends upon whether it is an agency as defined in 28 USCA 451. Section 451 provides that "agency" includes *any corporation in which the United States has a proprietary interest.* It was established by answers to written interrogatories and responses to requests for admissions that none of the capital stock of the Corporation is owned by the United States government. [Clk. Tr., pp. 1240-1247.]

The District Court nevertheless held, in effect, that the Corporation is an "agency" of the United States within the meaning of 28 USCA 1345 by denying the motions to dismiss. [Clk. Tr., pp. 1248-1249.] The order was certified for interlocutory appeal. [Clk. Tr., p. 1249, lines 8-12.] Leave to appeal was granted, and this appeal followed. [Clk. Tr., pp. 1251-1252, 1261-1262.]

III.
SPECIFICATION OF ERROR.

The District Court erred by its order made on January 14, 1966, denying the motion of appellants herein to dismiss this action, and in holding and deciding that the District Court has jurisdiction of this action.

IV.
SUMMARY OF ARGUMENT.

The Federal Savings & Loan Insurance Corporation is not an agency of the United States within the meaning of 28 USCA 1345. The Corporation is an agency for some purposes. But the term "agency", as used in 28 USCA 1345 for jurisdictional purposes, is limited to the definition of the word as set forth in 28 USCA 451. Section 451 provides that corporations are agencies only if the United States has a proprietary interest. The United States does not have a proprietary interest in the Federal Savings & Loan Insurance Corporation because it does not own any of its capital stock. The Congressional intent not to include all government-controlled, as distinguished from government-owned, corporations in 28 USCA 1345 is evidenced by other statutes expressly providing that there is jurisdiction of suits brought by certain corporations. There is no such express grant of jurisdiction for the Federal Savings & Loan Insurance Corporation. A bill has recently been introduced which will expressly provide for federal jurisdiction of suits brought by the Corporation. But as the law now stands there is no jurisdiction.

There is no other basis for federal jurisdiction over this lawsuit. There is no federal question involved. This is an action to foreclose trust deeds on real property.

The questions involved relate solely to state law, and such actions are customarily brought in the courts of the states where the real property is located. The language of 12 USCA 1725 authorizing the Corporation to sue in "any court of competent jurisdiction" has uniformly been held not to be a grant of federal jurisdiction. These words mean only what they say. The Corporation is authorized to sue, but the court in which it sues must otherwise be a court of competent jurisdiction. 28 USCA 1444, which permits the United States to remove an action to the federal court when it is sought to foreclose a federal tax lien, has also been held not to be a grant of jurisdiction. The sole function of this statute is to permit the United States to remove a case.

V.

ARGUMENT.

A. The Federal Savings & Loan Insurance Corporation Is Not an Agency of the United States Within the Meaning of 28 USCA 1345.

The controlling question in this case is whether the Federal Savings & Loan Insurance Corporation is an "agency of the United States" within the meaning of 28 USCA 1345.[1] Section 1345 provides as follows:

> "Except as otherwise provided by Act of Congress, the District Courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

---

[1]The Corporation has conceded in the District Court that the only basis of jurisdiction on which it relies is 28 USCA 1345, on the theory that it is an agency of the United States. Nevertheless, for the sake of completeness, we will hereafter show that there is also no other possible basis of jurisdiction.

The Corporation claims that it is an agency for jurisdictional purposes because certain other statutes declare that it is an "agency" or "instrumentality" of the United States or that it is a "wholly-owned government corporation". 12 USCA 1437(b) provides that the Home Loan Bank Board "shall be an independent agency (including the Federal Savings & Loan Insurance Corporation) in the executive branch of the Government". 12 USCA 1725(c) provides that the Federal Savings & Loan Insurance Corporation "shall be an instrumentality of the United States". 31 USCA 846 provides that "as used in this chapter the term 'wholly-owned Government corporation' means" the Federal Savings & Loan Insurance Corporation and forty other corporations therein listed.

None of these statutes purports to define the term "agency of the United States" as that term is used in 28 USCA 1345. The definition of this term as used in Title 28 is found in 28 USCA 451. Section 451 provides as follows in respect of federal corporations:

> "As used in this Title . . . The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or *any corporation in which the United States has a proprietary interest,* unless the context shows that such term was intended to be used in a more limited sense." (Emphasis added.)

28 USCA 1345, upon which the Corporation relies, is of course, a part of Title 28. The word "agency", as used in 28 USCA 1345, is restricted to the definition of that term as set forth in 28 USCA 451. Section 451 does not say that all government corporations which

are "agencies of the United States" are agencies for the purposes of jurisdiction. To the contrary, the meaning of the statute is that government corporations are not agencies for purposes of jurisdiction unless the government has a proprietary interest in the corporation. All corporations which perform functions designated by the Congress are not included within the "agency" definition. The statute limits the term "agency" to "any corporation in which the United States has a proprietary interest".

What is the meaning of the words "proprietary interest"? The term "proprietary" is synonymous with the word "ownership". This is the meaning of the word according to the dictionary. For example, Webster's Third New International Dictionary says that a proprietary interest means: "Held as the property of a private owner". This is also the legal meaning. The interest of a proprietor is that of an owner. (*Colbert v. Ricker* (1943), 314 Mass. 138, 140 [49 N.E. 2d 459].) It has been specifically held that a "proprietary interest" in a corporation means ownership of stock in the corporation. (*Rotenberg v. Sheehan* (D.C. E.D. Mo. 1943), 48 F. Supp. 584, 586; *Select Theatres Corp. v. Johnson* (D.C. S.D. N.Y. 1956), 145 F. Supp. 583, 592.)

How much stock must the government own in a corporation to have a proprietary interest? Any minority shareholder has such an interest. The statute might, if read alone, be interpreted to include as an agency of government a corporation in which the United States has a small amount of stock, perhaps one share, or it might be interpreted to include only a corporation whose stock was wholly-owned by the government. Read alone, the statute is ambiguous. When read with 28 USCA

1349, the meaning of Section 451 is clear. Section 1349 provides:

> "The District Courts shall not have jurisdiction of any civil action by or against any corporation on the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock."

The amount or degree of the government's proprietary interest is not necessary to determine in this case. It is an admitted fact that the United States does not own *any* of the stock of the Federal Savings & Loan Insurance Corporation. That being the fact, the government has *no* proprietary interest in the Corporation, and the Corporation is not an agency of the United States for jurisdictional purposes.

The express statutory grants of federal jurisdiction for other government corporations demonstrate further the Congressional intent that all government corporations are not to be considered "agencies" for jurisdictional purposes even though they are otherwise agencies of government. Congress has specifically conferred federal jurisdiction on suits brought by certain federal corporations, but has declined to do so in the case of others. Federal Savings & Loan Insurance Corporation is in the latter class. 12 USCA 1725, which is the statute setting forth the corporate powers of Federal Savings & Loan Insurance Corporation, provides that it may sue and be sued in "any court of competent jurisdiction." This type of language does not confer federal jurisdiction. (*Blackburn v. Portland Gold Mining Co.* (1900), 175 U.S. 571, 578-579 [20 S. Ct. 222, 44 L. Ed. 276]; *Shoshone Mining Co. v. Rutter* (1900), 177 U.S. 505, 506-507 [20 S. Ct. 726, 44 L. Ed. 864]; *De-*

Lamar's Nevada Gold Mining Co. v. Nesbitt (1900), 177 U.S. 523, 526-528 [20 S. Ct. 715, 44 L. Ed. 872].)

By contrast, the powers of the Commodity Credit Corporation are set forth in 15 USCA 714b. In 15 USCA 714 the Commodity Credit Corporation is declared to be an "agency and instrumentality of the United States". 15 USCA 714b(c) specifically provides for federal jurisdiction of suits by the Commodity Credit Corporation:

> "The District Courts of the United States including the District Courts of any Territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation . . ."

There are similar grants of federal jurisdiction for other government corporations. See, for example: 7 USCA 1503 and 1506(d), which provide that the Federal Crop Insurance Corporation is an "agency of the United States", and that "jurisdiction is conferred upon such District Court to determine such controversies without regard to the amount in controversy . . ." See also: 12 USCA 1819 which provides, with respect to the Federal Deposit Insurance Corporation, that "all suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States . . ."

A comparison between these statutes defining the powers of federal corporations to sue and be sued illustrates the point that Congress did not intend to confer federal jurisdiction on all suits brought by all government corporations. In some cases (including Federal

Savings & Loan Insurance Corporation) Congress has used general language which is well understood not to constitute a grant of federal jurisdiction. In others the statutes have been carefully drafted to say that the United States District Courts will have jurisdiction. All of this legislation would be meaningless if 28 USCA 1345 were construed to mean that all governmental corporations may sue in the federal courts in all case merely because they are government agencies. Congress avoided that result when it provided in 28 USCA 451 that the corporate agencies of the United States are not agencies for jurisdictional purposes unless the government actually has a proprietary interest.

It may well be that in the future the federal courts will have jurisdiction of all suits brought by the Federal Savings & Loan Insurance Corporation. On March 29, 1966, a bill was submitted to the Speaker of the House of Representatives by the Department of the Treasury, the Federal Reserve Board, the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation. A copy of this bill is attached to this brief as an appendix. The bill proposes to amend Section 407 of the National Housing Act (12 USCA 1730) by adding subsection (k)(1) to read as follows:

> "(k) *Jurisdiction and enforcement* — (1) Notwithstanding any other provision of law, (A) the Corporation shall be deemed to be an agency of the United States within the meaning of section 451 of Title 28 of the United States Code; (B) any civil action, suit, or proceeding to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States District Courts shall have original

jurisdiction thereof, without regard to the amount in controversy; and (C) the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the district and division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect: *Provided,* That any action, suit, or proceeding to which the Corporation is a party in its capacity as conservator, receiver, or other legal custodian of an insured State-chartered institution and which involves only the rights or obligations of investors, creditors, stockholders, and such institution under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any action, suit or proceeding in any court of any State or of the United States or any territory, or any other court." [Appendix, p. 22, line 18, to p. 23, line 4.]

"The Corporation" referred to in the proposed amendment to 12 USCA 1730 is the Federal Savings & Loan Insurance Corporation. (See: 12 USCA 1725-(a).) If this bill is introduced and passes, the federal courts will then have jurisdiction of suits brought by the Corporation. But at the present time there is no federal jurisdiction. Congress has not seen fit to conver federal jurisdiction on all suits brought by all government corporations. The government must either own over one-half of the stock in the corporation (28 USCA 451, 1345, 1349); or there must be a special statute granting jurisdiction. Neither requirement is

met in this case. The United States does not own any of the stock in the Federal Savings & Loan Insurance Corporation, and although an appropriate amendment to the law has been proposed, there is presently no special grant of jurisdiction.

B. There Is No Other Basis of Federal Jurisdiction.

1. Federal Incorporation Is Not a Basis of Federal Jurisdiction.

The Federal Savings & Loan Insurance Corporation is a corporation created by Act of Congress. (12 USCA 1725, subd. (a).) This fact is not a basis of jurisdiction. Federal jurisdiction depends upon whether the United States government owns the capital stock of the corporation. At one time it was the rule that the United States District Courts had jurisdiction of all suits brought by federally-created corporations. The theory was that, since the corporation was created by a statute of the United States, a federal question was involved for that reason. (*Osborn v. Bank of the United States* (1894), 9 Wheat. 738 [6 L. Ed. 204].) This rule has been changed by statute. 28 USCA 1349 now provides that the United States District Courts do not have jurisdiction unless the United States government owns more than one-half of the capital stock of the corporation.

> "28 USCA 1349. *Corporation organized under federal law as party.*
>
> "The District Courts shall not have jurisdiction of any civil action by or against any corporation on the ground that it was incorporated by or under an act of Congress, unless the United States is the owner of more than one-half of its capital stock."

This statute is so clear that there is no room for construction. Nevertheless, in one case it was contended that the statute does not mean what it says. But of course, the court held that the language is unambiguous and must be followed. *Marks v. R. F. C.* (4th Cir. 1942), 129 F. 2d 759 at 760:

> "We cannot follow the argument of Marks that Congress could not have meant that the jurisdiction of the District Court attaches when the United States owns 51 percent of the stock of the corporation and does not attach when the United States owns only 49 percent of the corporate stock. *Congress said just this in very clear language and we must give effect to this language. The wisdom of the result thereby reached is for Congress and not for the courts.*" (Emphasis added.)

2. There Is No Federal Question Involved.

Because of 28 USCA 1349, the United States District Courts do not have jurisdiction of suits brought by government corporations unless the government owns at least one-half of the stock. The only exception that has ever been recognized is when the nature of the case is such that it otherwise involves a federal question. *Federal Savings & Loan Insurance Corporation v. Third National Bank* (D.C. M.D. Tenn. 1945), 60 F. Supp. 110, was a suit brought by the Federal Savings & Loan Insurance Corporation. It was dismissed for lack of jurisdiction because the stock of the Federal Savings & Loan Insurance Corporation was then owned by the Home Owners Loan Corporation. The Home Owners Loan Corporation was a federal corporation whose stock was owned by the government, but the government did not own the stock of the Federal Savings & Loan In-

surance Corporation. On appeal, the judgment of dismissal was reversed because there was a federal question otherwise involved. The cause of action alleged in the complaint was based on certain acts of fraud and misrepresentation, which would constitute a violation of the National Housing Act, a federal statute. The court held that because of this federal question, there was jurisdiction. (*Federal Savings & Loan Ins. Corp. v. Third National Bank* (6th Cir. 1946), 153 F. 2d 678, at 680.)[2]

To involve a federal question, the result of the lawsuit must depend upon the validity, construction or effect of a federal law. In *Gully v. First National Bank* (1936), 229 U.S. 109, 112-114, 57 S. Ct. 96, 81 L. Ed. 70, Justice Cardozo summarized the "federal question" concept as follows:

> "How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. . . . The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. . . . A genuine and present controversy, not merely a possible or

[2]The stock of Federal Savings & Loan Insurance Corporation is no longer owned by the Home Owners Loan Corporation. Prior to the commencement of this action, the Home Owners Loan Corporation was dissolved and the stock of Federal Savings & Loan Insurance Corporation was retired. [Clk. Tr., p. 1240, line 27, p. 1241, line 17.]

conjectural one, must exist with reference thereto . . ., and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. . . . Indeed, the complaint itself will not avail as a basis of jurisdiction in so far as it goes beyond a statement of the plaintiff's cause of action and anticipates or replies to a probable defense. . . .

"Looking backward we can see that the early cases were less exacting than the recent ones in respect of some of these conditions. If a federal right was pleaded, the question was not always asked whether it was likely to be disputed. This is seen particularly in suits by or against a corporation deriving its charter from an act of Congress. . . . Modern statutes have greatly diminished the importance of those decisions by narrowing their scope. . . . Federal incorporation is now abolished as a ground of federal jurisdiction except where the United States holds more than one-half of the stock. . . . Partly under the influence of statutes disclosing a new legislative policy, partly under the influence of more liberal decisions, the probable course of the trial, the real substance of the controversy, has taken on a new significance. 'A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends.' " (Citations omitted.)

In the case now under consideration there is no federal law involved in any way. This is a suit to foreclose trust deeds on real property in the State of California. The only law involved is that of the State of California. If there is a federal question in this case for purposes of jurisdiction, then any suit to foreclose a trust deed could be brought in a federal court. This, of course, is not the law. All of the notes and trust deeds in litigation in this case were acquired by assignment from the Long Beach Federal Savings and Loan Association. If the Long Beach Federal Savings and Loan Association had brought suit, no one would argue that the federal court would have jurisdiction. The only fact that has occurred which changes the situation in any way is that the notes and trust deeds have been assigned to the Federal Savings & Loan Insurance Corporation. But, as we have shown, this fact that the Federal Savings & Loan Insurance Corporation is the plaintiff is not a basis of federal jurisdiction unless the United States government owns over one-half of its capital stock.

3. None of the Statutes Alleged in the Complaint Confers Federal Jurisdiction.

12 USCA 1725. [Clk. Tr., p. 5, lines 9-13.]

12 USCA 1725 provides that the Federal Savings & Loan Insurance Corporation shall have the power:

> "To sue and be sued, complain and defend, in any court of competent jurisdiction . . ."

The words "court of competent jurisdiction", when used in a federal statute, have been held not to constitute a grant of jurisdiction in the federal courts. For example, 30 USCA 30, which deals with the filing of

claims on government land, provides that an adverse claimant must commence suit "in a court of competent jurisdiction". The Supreme Court has held that this does not confer jurisdiction on the federal courts. (*Blackburn v. Portland Gold Mining Co.* (1900), 175 U.S. 571, 578-579 [20 Sup. Ct. 222, 44 L. Ed. 276]; *Shoshone Mining Co. v. Rutter* (1900), 177 U.S. 505, 506-507 [20 Sup. Ct. 726, 44 L. Ed. 846]; *DeLamar's Nevada Gold Mining Co. v. Nesbitt* (1900), 177 U.S. 523, 526-528 [20 Sup. Ct. 715, 44 L. Ed. 872].) The limited meaning of the words "court of competent jurisdiction" is set forth in the *Blackburn* case (*supra*) as follows in 175 U.S. at pages 578-579:

> "The first observation to be made is that Congress did not intend to prescribe jurisdiction in any particular court, state or Federal. 'It shall be the duty of the adverse claimant, within thirty days after filing his claim, *to commence proceedings in a court of competent jurisdiction,* to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment.'
>
> "The natural inference from this language is that the competency of the adjudicating court was not to be determined by the mere fact that the mining claims in controversy consisted of lands the title to which was in the United States. If that fact alone were to be decisive no other than a Federal court would have been mentioned. We think the intention of Congress, in this legislation, was to leave open to suitors all courts competent to determine the question of the right of possession. If the parties

to the controversy were citizens of different states, and if the matter in dispute exceeded the sum of value of $2,000, then the claimant might elect to commence proceedings in a Federal or in a state court, because either would be competent to determine the question of the right of possession. But if the usual conditions of Federal jurisdiction did not exist, that is, if there was no adverse citizenship, and if the matter in dispute did not exceed $2,000, then the party claimant could proceed in a state court." (Emphasis in original.)

The language of 12 USCA 1725 has been similarly construed. Prior to 1954, when §1725 was amended to read as at present, it provided that the Federal Savings & Loan Insurance Corporation could sue "in any court of law or equity, State or Federal". It was held that this was not a grant of federal jurisdiction because of the prohibition of 28 USCA 1349 (then 28 USCA 42) which provides that the District Courts do not have jurisdiction of suits by government corporations unless the government owns at least one-half of the capital stock. (*Federal Savings & Loan Ins. Corp. v. Third National Bank* (D.C.M.D. Tenn. 1945), 60 F. Supp. 110, 112-113.)

28 USCA 1444. [Clk. Tr., p. 5, lines 23-29.]

28 USCA 1444 provides:

"Any action brought under section 2410 of this Title against the United States in any state court may be removed by the United States to the District Court of the United States for the district and division in which the action is pending."

28 USCA 2410 provides:

> "Under the conditions prescribed in this section and section 1444 of this Title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any state court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien."

These statutes are a waiver of sovereign immunity only. They do not confer jurisdiction on the United States District Courts. *Wells v. Long* (9th Cir. 1947), 162 F. 2d 842, at 844:

> "The purpose of the statute immediately involved is merely to waive sovereign immunity from suit in certain types of cases, not to confer jurisdiction on courts to hear and determine such cases in the ordinary sense. It presupposes that the court in which such suit is pending or brought has jurisdiction thereof on grounds independent of the statute. As already noted, the act gives the United States alone the right of removal to the federal court. Unless the United States invokes the jurisdiction of that court, and it has not done so here, federal jurisdiction cannot be predicated merely on the fact that the United States is a party."

See also: *Remis v. United States* (1st Cir. 1960), 273 F. 2d 293, 294; *Cooper Agency, Inc. v. McLeod* (D.C.E.D. S.C. 1964), 235 F. Supp. 276, 284.

4. There Is No Diversity of Citizenship.

Although it is not alleged in the Complaint, mention should be made of the fact that jurisdiction cannot be based on diversity of citizenship. A long line of cases holds that a federal corporation which is authorized to do business in several states is not a citizen of the State in which its principal office is located or of any other state within which it engages in its business. (*Federal Intermediate Credit Bank v. Mitchell* (1927), 277 U.S. 213 [48 Sup. Ct. 449, 72 L. Ed. 854]; *Banker's Trust Co. v. Texas & P. R. Co.* (1916), 241 U.S. 295 [26 Sup. Ct. 569, 60 L. Ed. 1010].) The general rule is that the citizenship of a federal corporation created to operate in one or more states is national only. It has no state citizenship for jurisdictional purposes. (*First Carolinas Joint Stock Land Bank v. New York Title & Mortgage Co.* (D.C.E.D. S.C. 1932), 59 F. 2d 350, 69 A.L.R. 1340.)

Conclusion.

The District Court erred in denying the motions to dismiss. There is no federal jurisdiction of this case under any of the theories alleged in the Complaint or under any other theory. The Federal Savings & Loan Insurance Corporation is one of the many government corporations which is an agency of government, but which Congress has not yet seen fit to declare to be an agency for jurisdictional purposes. It appears that the law may be amended to expressly provide that the District Courts will have jurisdiction of suits brought by

the Federal Savings & Loan Insurance Corporation. But at present there is no jurisdiction.

The order of the District Court should be reversed with directions to dismiss this action on the ground that there is no jurisdiction.

Respectfully submitted,

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Attorneys for Appellants Acron Investments, Inc., Velturon Corporation, Metrim Corporation, Fullerton Country Club, C. S. Jones, Edith B. Jones, Los Coyotes Country Club, Bellehurst Country Club, Kenneth G. Walker and Nancy M. Walker.

Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those Rules.

JOSEPH D. MULLENDER, JR.,
Attorney.

APPENDIX.

A Bill.

To strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Financial Institutions Supervisory Act of 1966".

TITLE I — PROVISIONS RELATING TO THE FEDERAL HOME LOAN BANK BOARD AND THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Sec. 101. Subsection (d) of section 5 of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(d)), is hereby amended to read as follows:

"(d)(1) The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, or in any other action, suit, or proceeding to which it is a party or in which it is interested, and in the administration of conservatorships and receiverships, the Board is authorized to act in its own name and through its own attorneys. Except as otherwise provided herein, the Board shall be subject to suit (other than suits on claims for money damages) by any Federal savings and loan association or director or officer thereof with respect to any matter under this section or any other applicable law, or rules or regulations thereunder, in the United States district court for the judicial district in which the home office of the as-

sociation is located, or in the United States District Court for the District of Columbia, and the Board may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

"(2)(A) If, in the opinion of the Board, an association is violating or has violated or is about to violate a law, rule, regulation, or charter or other condition imposed by or agreement entered into with the Board, or is engaging or has engaged or is about to engage in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the association. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless a later date is set by the Board at the request of the association. Unless the association shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board shall issue and serve upon the association an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association and its directors, officers, employees, and agents to cease and desist from the same,

and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

"(B) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the association concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

"(3)(A) Whenever the Board shall determine that the violation or threatened violation of law, rules, or regulations, or the unsafe or unsound practice or practices, specified in the notice of charges served upon the association pursuant to paragraph (2)(A) of this subsection, or the continuation thereof, could cause insolvency (as defined in paragraph (6)(A)(i) of this subsection) or substantial dissipation of assets or earnings of the association, or could otherwise seriously prejudice the interests of its savings account holders, the Board may issue a temporary order requiring the association to cease and desist from any such violation or practice. Such order shall become effective upon service upon the association and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Board shall dismiss the charges specified in such notice or, if a cease-and-desist order is issued against the association, until the effective date of any such order.

"(B)Within ten days after the association concerned has been served with a temporary cease-and-desist order,

the association may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the association under paragraph (2)(A) of this subsection, and such court shall have jurisdiction to issue such injunction.

"(C) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(4)(A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the association has suffered or will probably suffer substantial financial loss or other damage or that the interests of its savings account holders could be seriously prejudiced by reason of

such violation or practice or breach of fiduciary duty, the Board may serve upon such director or officer a written notice of its intention to remove him from office.

"(B) Whenever, in the opinion of the Board, any director or officer of an association, by conduct or practice with respect to another savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced his general unfitness to continue as a director or officer, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced his general unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such association.

"(C) In respect to any director or officer or an association or any other person referred to in paragraphs (4)(A) or 4) (B), the Board may, if it deems it necessary for the protection of the association or the interests of its savings account holders, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subparagraph (E) of this

paragraph, shall remain in effect until terminated or set aside by the Board. Copies of any such notice shall also be served upon the association of which he is a director or officer or in the conduct of whose affairs he has participated.

"(D) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an association, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless a later date is set by the Board at the request of (i) such director, officer, or other person, and for good cause shown, or (ii) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice has been established, the Board shall issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the association, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such association and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforce-

able except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

"(E) Within ten days after a director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an association under subparagraph (C) of this paragraph, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subparagraph (A) or (B) of this paragraph, and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(5)(A) Whenever any director or officer of an association, or other person participating in the conduct of the affairs of such association, is charged in any information or indictment, or complaint authorized by a United States Attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Board may, by written notice served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. A copy of such notice shall also be served upon the association. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other

person, and at such time as such judgment is not subject to further appellate review, the Board shall issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the association. A copy of such order shall be served upon such association, whereupon such director or officer shall cease to be a director or officer of such association. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in association affairs, pursuant to subparagraphs (A) or (B) of paragraph (4) of this subsection.

"(B) If at any time, because of the suspension of one or more directors pursuant to this subsection (d), there shall be on the board of directors of an association less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board and not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of an association are suspended pursuant to this subsection (d), the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the association and their respective successors take office.

"(6)(A) The grounds for the appointment of a conservator or receiver for an association shall be one or more of the following: (i) insolvency in that the as-

sets of the association are less than its obligations to its creditors and others, including its members; (ii) substantial dissipation of assets or earnings due to any violation or violations of law, rules, or regulations, or to any unsafe or unsound practice or practices; (iii) an unsafe or unsound condition to transact business; (iv) wilful violation of a cease-and-desist order which has become final; (v) concealment of books, papers, records, or assets of the association or refusal to submit books, papers, records, or affairs of the association for inspection to any examiner or to any lawful agent of the Board. The Board shall have exclusive power and jurisdiction to appoint a conservator or receiver. If, in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists, the Board is authorized to appoint ex parte and without notice a conservator or receiver for the association. In the event of such appointment, the association may, within thirty days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Board to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Board to remove such conservator or receiver. Such proceedings shall be given precedence over other cases pending in such courts, and shall be in every way expedited. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

"(B) In addition to the foregoing provisions, the Board may, without any requirement of notice, hearing, or other action, appoint a conservator or receiver for an association in the event that (i) the association, by resolution of its board of directors or of its members, consents to such appointment, or (ii) the association is removed from membership in any Federal Home Loan Bank, or its status as an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation is terminated.

"(C) Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a conservator or receiver.

"(D) A conservator shall have all the powers of the members, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Board. The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for an association, and said Corporation shall have power to buy at its own sale as receiver, subject to approval by the Board. The Board may, without any requirement of notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but any such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this paragraph (6) shall be removal of the conservator or receiver in office at the time of such removal.

"(7)(A) Any hearing provided for in this subsection (d) shall be held in the Federal judicial district or in the territory in which the home office of the association is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of the Administrative Procedure Act; but such hearing shall be private, unless otherwise ordered for good cause found. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, the Board shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding on order or orders consistent with the provisions of this subsection. Judicial review of any such order shall be exclusively as provided in this paragraph (7). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (B) of this paragraph, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

"(B) Any party to the proceeding, or any person required by an order issued under this subsection to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to subparagraph (A) of this paragraph (other than an order issued with the consent of the association or the director or officer or other person concerned, or

an order issued under paragraph (5)(A) of this subsection), by filing in the court of appeals of the United States for the circuit in which the home office of the association is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said subparagraph (A) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in the Administrative Procedure Act. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

"(C) The commencement of proceedings for judicial review under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

"(8) The Board may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for the enforcement of any effective and outstanding order issued by the Board under this subsection (d), and such courts

shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this subsection no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this subsection, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(9) In the course of or in connection with any proceeding under this subsection, the Board or any member thereof or a designated representative of the Board, including any person designated to conduct any hearing under this subsection, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Board is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to proceedings under this subsection may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this paragraph shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of

the Board or of the Federal Savings and Loan Insurance Corporation in connection with this subsection shall be considered as nonadministrative expenses.

"(10) Any service required or authorized to be made by the Board under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

"(11) The Board shall have power to make rules and regulations for the reorganization, consolidation, liquidation, and dissolution of associations, for the merger of associations with other institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, for associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships; and the Board may, by regulation or otherwise, provide for the exercise of functions by members, directors, or officers of an association during conservatorship and receivership.

"(12)(A) Any director or officer, or former director or officer, of an association, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under paragraphs (4)(C), (4)(d), or (5)(A) of this subsection, and who (i) participates in any manner in the conduct of the affairs of such association, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect of any voting rights in such association, or (ii) without the prior written approval of the Board, votes for a director or serves or acts as a director, officer, or employee of

any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

"(B) Except with the prior written consent of the Board, no person shall serve as a director, officer, or employee of an association who has been convicted, or who is hereafter convicted, of a criminal offense involving dishonesty or a breach of trust. For each wilful violation of this prohibition, the association involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Board may recover by suit or otherwise for its own use.

"(C) Whenever a conservator or receiver appointed by the Board demands possession of the property, business, and assets of any association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than $5,000 or imprisonment for not more than one year, or both.

"(13)(A) As used in this subsection—

"(1) The terms 'cease-and-desist order which has become final' and 'order which has become final' mean a cease-and-desist order, or an order, issued by the Board with the consent of the association or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (7)(B) of this subsection, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings

provided for in said paragraph, or an order issued under paragraph (5)(A) of this subsection.

"(2) The term 'territory' includes the Commonwealth of Puerto Rico, and any possession of the United States or any place subject to the jurisdiction of the United States.

"(B) As used in paragraph (4) of this subsection, the term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(14) As used in this subsection, the terms 'Federal savings and loan association' and 'association' shall include any institution with respect to which the Federal Home Loan Bank Board now or hereafter has any statutory power of examination or supervision under any or joint resolution of Congress other than this Act, the Federal Home Loan Bank Act, and the National Housing Act. For the purposes of this paragraph (14), references in this subsection to directors, officers, employees, and agents or to former directors or officers, of associations shall be deemed to be references respectively to directors, officers, employees, and agents, or to former directors or officers, of such institutions, references therein to savings account holders and to members of associations shall be deemed to be references to holders of withdrawable accounts in such institutions, and references therein to boards of directors of associations shall be deemed to be references to boards of directors or other governing boards of such institutions. Said Board shall have power by regulation to define, for the purposes of this paragraph (14), terms used or referred to in the sentence next preceding and other terms in this subsection.

"(15) The provisions of this subsection, as amended by the amendment by which this sentence is added, shall not be applicable to or with respect to any proceeding for the appointment of a conservator or receiver pending immediately prior to the effective date of said amendment or any conservator or receiver appointed as a result of such proceeding, or to or with respect to any supervisory representative in charge, conservator, or receiver in office immediately prior to said date, or any successor of any of the same, or to the appointment of any such successor, and the provisions of this subsection as in effect immediately prior to said date shall be and remain applicable to all of the foregoing."

Sec. 102. Section 407 of the National Housing Act, as amended (12 U.S.C. 1730), is hereby amended to read as follows:

SEC. 407. TERMINATION OF INSURANCE AND ENFORCEMENT PROVISIONS.

"(a) *Voluntary termination of insurance*—Any insured institution other than a Federal savings and loan association may terminate its status as an insured institution by written notice to the Corporation specifying a date for such termination.

"(b) *Involuntary termination of insurance; notice and hearing*—(1) Whenever, in the opinion of the Corporation, any insured institution has violated its duty as such or is engaging or has engaged in an unsafe or unsound practice in conducting the business of such institution, or is in an unsafe or unsound condition to continue operations as an insured institution, or is violating or has violated an applicable law, rule, regulation, or order, or any condition imposed by the Corporation

or any agreement entered into with the Corporation, including any agreement entered into under section 403 of this title, the Corporation shall serve upon the institution a statement with respect to such violations or practices or condition for the purpose of securing the correction thereof, and shall send a copy of such statement to the appropriate State supervisory authority.

"(2) Unless such correction shall be made within one hundred and twenty days after service of such statement, or such shorter period of not less than twenty days after such service as (A) the Corporation shall require in any case where the Corporation determines that its insurance risk with respect to such institution could be unduly jeopardized by further delay in the correction of such violations or practices or condition, or (B) the appropriate State supervisory authority shall require, or unless within such time the Corporation shall have received acceptable assurances that such correction will be made within a time and in a manner satisfactory to the Corporation, or in the event such assurances are submitted to and accepted by the Corporation but are not carried out in accordance with their terms, the Corporation may, if it shall determine to proceed further, issue and serve upon the institution written notice of intention to terminate the status of the institution as an insured institution.

"(3) Such notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices or condition, and shall fix a time and place for a hearing thereon. Such hearing shall be fixed for a date not earlier than thirty days after service of such notice. Unless the institution shall appear at the hearing by a duly au-

thorized representative, it shall be deemed to have consented to the termination of its status as an insured institution. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any violation or unsafe or unsound practice or condition specified in such notice has been established and has not been corrected within the time above prescribed in which to make correction, the Corporation may issue and serve upon the institution an order terminating the status of the institution as an insured institution; but any such order shall not become effective until it is an order which has become final (except in the case of an order of termination issued upon consent, which shall become effective at the time specified therein).

"(c) *Date of termination of insured status*—The effective date of the termination of an institution's status as an insured institution under the foregoing provisions of this section shall be the date specified for such termination in the notice by the institution to the Corporation as provided in subsection (a) of this section, or the date upon which an order of termnination issued under subsection (b)(3) of this section becomes effective. The Corporation may from time to time postpone the effective date of the termination of an institution's status as an insured institution at any time before such termination has become effective, but in the case of termination by notice given by the institution such effective date shall be postponed only with the written consent of the institution.

"(d) *Continuation of insurance; examinations; notice to members; and payment of premiums*—In the event of the termination of an institution's status as an insured institution, insurance of its accounts to the

extent that they were insured on the effective date of such termination as hereinabove provided in subsection (c), less any amounts thereafter withdrawn, repurchased, or redeemed, shall continue for a period of two years, but no investments or deposits made after such date shall be insured. The Corporation shall have the right to examine such institution from time to time during the two-year period aforesaid. Such insured institution shall be obligated to pay, within thirty days after the effective date of such termination, as a final insurance premiun, a sum equivalent to twice the last annual insurance premium payable by it. In the event of the termination of insurance of accounts as herein provided the institution which was the insured institution shall give prompt and reasonable notice to all of its insured members that it has ceased to be an insured institution and it may include in such notice that fact that insured accounts, to the extent not withdrawn, repurchased, or redeemed, remain insured for two years from the date of such termination, but it shall not further represent itself in any manner as an insured institution. In the event of failure to give the notice to insured members as herein provided the Corporation is authorized to give reasonable notice.

"(e) *Cease-and-desist proceedings*—(1) If, in the opinion of the Corporation, any insured institution or any instituition any of the accounts of which are insured is engaging or has engaged or is about to engage in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated or is about to violate an applicable law, rule, or regulation, or any condition imposed by the Corporation or any agreement entered into with the Corporation, in-

cluding any agreement entered into under section 403 of this title, the Corporation may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless a later date is set by the Corporation at the request of ths institution. Unless the institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Corporation shall issue and serve upon the institution an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the institution and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

"(2) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the institution concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable except to such

extent as it is stayed, modified, terminated, or set aside by action of the Corporation or a reviewing court.

"(f) *Temporary cease-and-desist orders*—(1) Whenever the Corporation shall determine that the violation or threatened violation of law, rules, or regulations, or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution pursuant to subsection (e)(1) of this section, or the continuation thereof, could cause insolvency or substantial dissipation of assets or earnings of the institution, or could otherwise seriously prejudice the interests of its insured members or of the Corporation, the Corporation may issue a temporary order requring the institution to cease and desist from any such violation or practice. Such order shall become effecitve upon service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Corporation shall dismiss the charges specified in such notice or, if a cease-and-desist order is issued againt the institution, until the effective date of any such order.

"(2) Within ten days after the institution concerned has been served with a temporary cease-and-desist order, the institution may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceed-

ings pursuant to the notice of charges served upon the institution under subsection (e)(1) of this section, and such court shall have jurisdiction to issue such injunction.

"(3) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Corporation may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(g) *Suspension or removal of director or officer*—(1) Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Corporation determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the Corporation may serve upon such director or officer a written notice of its intention to remove him from office.

"(2) Whenever, in the opinion of the Corporation, any director or officer of an insured institution, by con-

prohibited from participation in the conduct of the affairs of an insured institution under paragraph (3) of this subsection, such director, officer, or other person may apply to the United States district court for the judicial district in which the principal office of the insitution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under paragraphs (1) or (2) of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(h) *Suspension of director or officer under indictment*—Whenever any director or officer of an insured institution, or other person participating in the conduct of the affairs of such institution, is charged in any information or indictment, or complaint authorized by a United States Attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Corporation may, by written notice served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Corporation shall issue and serve upon such director, officer, or other per-

son an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the institution. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Corporation from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in institution affairs, pursuant to paragraphs (1) or (2) of subsection (g) of this section.

"(i)) *Termination of Federal Home Loan Bank membership*—Termination under this section or otherwise of status of an institution as an insured institution shall automatically constitute a removal under subsection (i) of section 6 of the Federal Home Loan Bank Act of the institution from Federal Home Loan Bank membership, if at the time of such termination such institution is a member of a Federal Home Loan Bank; and removal of an institution from Federal Home Loan Bank membership under subsection (i) of section 6 of the Federal Home Loan Bank Act or otherwise shall automatically constitute an order of termination under this section of the status of such institution as an insured institution, if such institution is at the time of such removal an insured institution.

"(j) *Hearings and judicial review*—(1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the principal office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of the

Administrative Procedure Act; but such hearing shall be private, unless otherwise ordered for good cause found. After such hearing, and within ninety days after the Corporation has notified the parties that the case has been submitted to it for final decision, the Corporation shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Corporation may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Corporation may modify, terminate, or set aside any such order with permission of the court.

"(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the institution or the director or officer or other person concerned, or an order issued under subsection (h) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days

after the date of service of such order, a written petition praying that the order of the Corporation to modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Corporation, and thereupon the Corporation shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Corporation. Review of such proceedings shall be had as provided in the Administrative Procedure Act. The judement and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 2154 of title 28 of the United States Code.

"(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay order issued by the Corporation.

"(k) *Jurisdiction and enforcement*—(1) Notwithstanding any other provision of law, (A) the Corporation shall be deemed to be an agency of the United States within the meaning of section 451 of title 28 of the United States Code; (B) any civil action, suit, or proceeding to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States districts courts shall have original jurisdiction thereof, without regard to the amount in controversy; and (C) the Corporation may, without bond or security, remove any such action, suit,

or proceeding from a State court to the United States district court for the district and division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect; *Provided,* That any action, suit, or proceeding to which the Corporation is a party in its capacity as conservator, receiver, or other legal custodian of an insured State-chartered institution and which involves only rights or obligations of investors, creditors stockholders, and such institution under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any action, suit, or proceeding in any court of any State or of the United States or any territory, or any other court.

"(2) The Corporation may, in its discretion, apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for the enforcement of any effective and outstanding order issued by the Corporation under this section, and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(l) *Reporting requirements* — (1) Whenever a change occurs in the outstanding voting stock of any insured institution which will result in control or a change in the control of such institution, the president or other chief executive officer of such institution shall

promptly report such facts to the Corporation upon obtaining knowledge of such change. As used in this subsection, the term 'control' means the power to directly or indirectly direct or cause the direction of the management or policies of the insured institution. If there is any doubt as to whether a change in ownership or other change in the outstanding voting stock of any insured institution is sufficient to result in control or a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the Corporation.

"(2) Whenever an insured institution or an insured bank of the Federal Deposit Insurance Corporation makes a loan or loans secured (or to be secured) by 25 per centum or more of the voting stock of an insured institution, the president or other chief executive officer of the lending insured institution or insured bank shall promptly report such fact to the Corporation upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more, or the stock is of a newly organized insured institution prior to its opening.

"(3) The reports required by paragraphs (1) and (2) of this subsection shall contain the following information to the extent that it is known by the person making the report: (A) the number of shares involved, (B) the names of the sellers (or transferors), (C) the names of the purchasers (or transferees), (D) the names of the beneficial owners if the shares are of record in another name or other names, (E) the purchase price, (F) the total number of shares owned by the sellers (or transferors), the purchasers (or transferees) amd the beneficial owners both immediately before and

after the transaction, and in the case of a loan, (G) the name of the borrower, (H) the amount of the loan, and (I) the name of the institution issuing the stock securing the loan and the number of shares securing the loan. In addition to the foregoing, such reports shall contain such other information as may be available to inform the Corporation of the effect of the transaction upon control of the institution whose stock is involved. The reports required by this subsection shall be in addition to any reports that may be required pursuant to other provisions of law.

"(4) Whenever such a change as is described in paragraph (1) of this subsection occurs, the insured institution shall report promptly to the Corporation any change or changes, or replacement or replacements, of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive or director.

"(5) Without limitation by or on the foregoing provisions of this subsection, the Corporation may require insured institutions and individuals or other persons who have had any connection with the management of any insured institution, as defined by the Corporation, to provide, in such manner and under such civil penalties (which shall be cumulative to any other remedies) as the Corporation may prescribe, such periodic or other reports and disclosures as the Corporation may determine to be necessary or appropriate for the protection of investors or the Corporation.

"(6) As used in this subsection, the term 'stock' means such stock or other equity securities or equity

interests in an insured institution, or rights, interests, or powers with respect thereto, regardless of whether such institution is a stock company, a mutual institution, or otherwise, as the Corporation may by regulation define for the purposes of this subsection.

"(m) *Ancillary provisions*—(1) In making examinations of insured institutions, examiners appointed by the Federal Home Loan Bank Board shall have power, on behalf of the Corporation, to make such examinations of the affairs of all affiliates of such institutions as shall be necessary to disclose fully the relations between such institutions and their affiliates and the effect of such relations upon such institutions. The cost of examinations of such affiliates shall be assessed against and paid by the institution. For purposes of this subsection, the term 'affiliate' shall have the same meaning as where used in section 2(b) of the Banking Act of 1933, as amended, except that the term 'member bank' shall be demed to refer to an insured institution.

"(2) In connection with examinations of insured institutions and affiliates thereof, the Corporation, or its designated representatives, shall have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such institution or affiliate thereof, and to issue subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the institution or affiliate thereof is located, or in which the witness resides or carriers on business. Such courts shall have jurisdiction and power to order and require compliance with any subpena.

"(3) In the course of or in connection with any proceeding under this section, the Corporation or its designated representatives, including any person designated to conduct any hearing under this section, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Corporation is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carriers on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Board or of the Federal Savings and Loan Insurance Corporation in connection with this section shall be considered as nonadministrative expenses.

"(n) *Service*—Any service required or authorized to be made by the Corporation under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Corporation may regulation or otherwise provide. Copies of

any notice or order served by the Corporation upon any institution or any director or officer thereof, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

"(o) *Consultation with State authorities*—In connection with any action under this section involving an insured State-chartered institution, the Corporation shall, to the extent compatible with the public interest, consult with the appropriate State supervisory authority and proceed with due regard for whatever power and intent such authority may have to effect the necessary corrective action.

"(p) *Penalties*—(1) Any director or officer, or former director or officer, of an insured institution or an institution any of the accounts of which are insured, or any person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (g)(3), (g)-(4), or (h) of this section, and who (A) participates in any manner in the conduct of the affairs of such institution, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents or authorizations in respect of any voting rights in such institution, or (B) without the prior written approval of the Corporation, votes for a director or serves or acts as a director, officer, or employee of any insured institution, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

"(2) Except with the prior written consent of the Corporation, no person shall serve as a director, of-

ficer, or employee of an insured institution who has been convicted, or who is hereafter convicted, of a criminal offense involving dishonesty or a breach of trust. For each wilful violation of this prohibition, the institution involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover by suit or otherwise for its own use.

"(q) *Definitions*—(1) As used in this section—

"(A) The terms 'cease-and-desist order which has become final' and 'order which has become final' mean a cease-and-desist order, or an order, issued by the Corporation with the consent of the institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Corporation has been filed and perfected in a court of appeals as specified in subsection (j)(2) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said subsection, or an order issued under subsection (h) of this section.

"(B) The term 'territory' includes the Commonwealth of Puerto Rico, and any possession of the United States or any place subject to the jurisdiction of the United States.

"(2) As used in subsection (f) of this section, the term 'insolvency' means that the assets of an institution are less than its obligations to its creditors and others, including its members.

"(3) As used in subsection (g) of this section, the term 'violation' includes without limitation any action

(alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation."

TITLE II—PROVISIONS RELATING TO THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, AND THE COMPTROLLER OF THE CURRENCY

Sec. 201 Paragraph (6) of subsection (j) of section 7 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817 (j)(6), is repealed and section (3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813), is amended by adding the following new subsection (q):

"(q) The term 'appropriate Federal banking agency' shall mean (a) the Comptroller of the Currency in the case of a national banking association or a District Bank, (b) the Board of Governors of the Federal reserve System in the case of a State member insured bank (except a District bank), and (c) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank)."

Sec. 202. Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), is amended by redesignating subsections (b), (c) and (d) thereof as (p), (q) and (r) and by adding after subsection (a) thereof the following new subsections (b) through (c), inclusive:

"(b)(1) If, in the opinion of the appropriate Federal banking agency, any insured bank or bank which has insured deposits is engaging or has engaged or is about to engage in an unsafe or unsound practice in con-

ducting the business of such bank, or is violating or has violated or is about to violate an applicable law, rule, or regulation, or any condition imposed by the agency or any agreement entered into with the agency, the agency may issue and serve upon the bank a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless a later date is set by the agency at the request of the bank. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency shall issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

"(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the bank concerned (except in the case of a cease-and-desist order issued upon consent, which shall

become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

"(c)(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation of law, rules, or regulations, or the unsafe or unsound practice or practices, specified in the notice of charges served upon the bank pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, could cause insolvency or substantial dissipation of assets or earnings of the bank, or could otherwise seriously prejudice the interests of its depositors, the agency may issue a temporary order requiring the bank to cease and desist from any such violation or practice. Such order shall become effective upon service upon the bank and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the bank, until the effective date of any such order.

"(2) Within ten days after the bank concerned has been served with a temporary cease-and-desist order, the bank may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, opera-

tion, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

"(d) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of this section, the appropriate Federal banking agency may apply to the United States District Court, or the United States court of any territory, within the jurisdiction of which the home office of the bank is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(e)(1) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or praticipated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the agency determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

"(2) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his general unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participation in the conduct of the affairs of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his general unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

"(3) In respect to any director or officer of an insured bank or any other person referred to in subsections (e)(1) or (e)(2), the appropriate Federal agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect until terminated or set aside by the agency. Copies of any such notice shall also be served

upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

"(4) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured bank, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless a later date is set by the agency at the request of (A) such director or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice has been established, the agency shall issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

"(f) Within ten days after a director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured bank under subsection (e)(3) of this section, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subsections (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(g)(1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information or indictment, or complaint authorized by a United States Attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the appropriate Federal banking agency may, by written notice served upon such director, officer, or other person suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the agency shall

issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the bank. A copy of such order shall be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in bank affairs, pursuant to paragraphs (1) or (2) of subsection (e) of this section.

"(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the bank and their respective successors take office.

"(h)(1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the home office of the bank is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with

the provisions of the Administrative Procedure Act; but such hearing shall be private, unless otherwise ordered for good cause found. After such hearing, and within ninety days after the appropriate Federal banking agency has notified the parties that the case has been submitted to it for final decision, the agency shall render its decision (which include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the agency may at any time, upon the notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the bank or the director or officer or other person concerned or an order issued under paragraph (1) of subsection (g) of this section) by filing in the court of appeals of the United States for the circuit in which the home office of the bank is located, or in the United States Court of Appeals for the District of Columbia Circuit, within

thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in the Administrative Procedure Act. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

"(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

"(i) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the bank is located, for the enforcement of any effective and outstanding order issued by the agency under this section, and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under

this section, or to review, modify, suspend, terminate or set aside any notice or order.

"(j) Any director or officer, or former director or officer, of an insured bank or bank which has insured deposits, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (e)(3), (e)(4), or (g)(1) of this section, and who (i) participates in any manner in the conduct of the affairs of such bank, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written approval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

"(k)(1) As used in this subsection (1) the terms 'cease-and-desist order which has become final' and 'order which has become final' mean a cease-and-desist order, or an order, issued by the appropriate Federal banking agency with the consent of the bank or the director or officer or other person concerned, or with respect to which no petition for review of the action of the agency has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (h), or with respect to which the action of the court in which said petition is so filed is not subject to further review of the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (1) of subsection (g) of this section,

(2) the term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(l) Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any institution or any director or officer thereof, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

"(m) In connection with any action under this section involving a State bank the appropriate Federal banking agency shall, to the extent compatible with the public interest, consult with the appropriate State supervisory authority and proceed with due regard for whatever power and intent such authority may have to effect the necessary corrective action.

"(n) In the course of or in connection with any proceeding under this section, the appropriate Federal banking agency, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any Territory or other place subject to the juris-

diction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any Territory in which such proceeding is being conducted or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

Section 203. Subsections (b) and (c) of section 10 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1820(b), (c)), are amended to read as follows:

"(b) The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation, to examine any insured State nonmember bank (except a District bank), any State nonmember bank making application to become an insured bank, and any closed insured bank, whenever in the judgment of the Board of Directors an examination of the bank is necessary. In addition to the examinations provided for in the preceding sentence, such examiners shall have like power to make a special examination of any state member bank and any national bank or District bank, whenever in the judgment of the Board of Directors such special examination is necessary to determine the condition of any such bank for insurance purposes. In making examinations of insured banks, examiners ap-

pointed by the Corporation shall have power on behalf of the Corporation, to make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon such banks. Each examiner shall have power to make a thorough examination of all of the affairs of the bank and its affiliates, and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured deposits. Each claim agent shall have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured deposits, and to issue subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any Territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

"(c) In connection with examinations of insured banks, and affiliates thereof, the appropriate Federal banking agency, or its designated representatives, shall have the power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership or any such bank or affiliate thereof, and to issue subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States

court in any Territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena. For purposes of this section, the term 'affiliate' shall have the same meaning as where used in section 2(b) of the Banking Act of 1933, as amended (12 U.S.C. 221a) except that the term 'member bank' in said section 2(b) shall be deemed to refer to an insured bank."

Sec. 204. The first five sentences of section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818-(a)) are amended to read as follows:

"Sec. 8. (a) Any insured bank (except a national member bank or State member bank) may, upon not less than ninety days' written notice to the Corporation, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an insured bank, or violated an applicable law, rule, regulation or order, or any condition imposed by the Corporation or any agreement entered into with the Corporation to which the insured bank is subject, the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a District bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a

copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days, or such shorter period not less than twenty days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured bank and termination of such status thereupon may be ordered. Any insured bank whose insured status has been terminated by order of the Board of Directors under this subsection shall have

the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section."

Sec. 205. Subsection "Fourth" of section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819 "Fourth") is amended to read as follows:

"Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect: *Provided,* That any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board of Directors shall designate an agent upon whom service of process may be made in any State, Territory, or jurisdiction in which any insured bank is located."

Sec. 206. Section 30 of the Federal Reserve Act, as amended, (12 U.S.C. 77) is hereby repealed.